

REMARKS

Applicants appreciate the Examiner's consideration and time during the telephone discussion with their Representative on September 29, 2004.

Claims 1-3 and 5-19 are pending in this application. As requested, Claims 17 and 18 have been amended to properly depend from Claim 1. Claims 20-22 have been canceled as drawn to a non-elected invention, and Applicants reserve the right to pursue these claims in one or more divisional applications. The amendments herein are submitted merely to place the case in better condition for allowance, and as such no new search or consideration is required. Entry and favorable consideration of the amendments are kindly requested.


As discussed, each of the current art rejections relies on the Halliyal et al reference, U.S. 6,721,046. The earliest date Halliyal et al is available as prior art is July 12, 2001, (35 U.S.C. §102(e)). The present invention was reduced to practice, however, before July 12, 2001, and as such Halliyal et al is not available as prior art against the present invention. In support of this fact, Applicants submit herewith a Declaration under 37 C.F.R. §1.131, which is signed by the inventors, and which sets out facts and evidence sufficient to show that the present invention was reduced to practice before July 12, 2001. Since Halliyal et al is not available as prior art, any rejection based thereon is believed to be unsustainable, and should be withdrawn.

Because the Halliyal et al reference was first cited in the final rejection (to which the present response is the first reply), the attached Declaration is believed to be seasonably presented. MPEP 715.09. Favorable consideration of the attached Declaration and withdrawal of all grounds of rejection based on Halliyal et al are therefore kindly requested.

This application is now believed to be in condition for allowance, and the Examiner is kindly requested to pass it to issue. If any issues remain which the Examiner feels may be best resolved through a personal or telephonic interview, however, the Examiner is respectfully requested to contact Applicants' counsel at the phone number listed below.

Respectfully submitted,

PIPER RUDNICK LLP

A handwritten signature in black ink, appearing to read 'S. Kelber', is written over a horizontal line.

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